

§ 225.4 Cooperation with the States.

The Director shall cooperate with any State which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Director must find and reconfirm, on an annual basis, that:

- (a) Authority resides in a State agency to conserve resident species determined by the State agency or the Director to be endangered or threatened;
- (b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident species in the State which are deemed by the Director to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information and data requested to the Director;
- (c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species;
- (d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and
- (e) Provisions are made for public participation in designating resident species as endangered or threatened.

§ 225.5 Cooperative agreement.

Following receipt of an application by a State for a Cooperative Agreement and a determination by the Director that the State program for endangered and threatened species is adequate and active, the Director shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Grant-In-Aid Award can be approved for endangered or threatened species projects. The Cooperative Agreement must be reconfirmed annually to insure that it reflects new laws, species lists, rules or regulations, and programs, and to demonstrate that the program is still active and adequate. In order for a State to receive financial assistance, such Cooperative Agreement must also contain:

- (a) The actions that are to be taken by the Director and the State;
- (b) The benefits that are expected to be derived in connection with the conservation of endangered or threatened species; and
- (c) The estimated cost of these actions.

§ 225.6 Allocation of funds.

The Director shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various States using the following as the basis for his determination:

- (a) The international commitments of the United States to protect endangered or threatened species;
- (b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;
- (c) The number of federally listed endangered and threatened species within a State;
- (d) The potential for restoring endangered and threatened species within a State; and
- (e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 225.7 Financial assistance.

(a) Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement. Subsequent to such agreement, the Director may further agree with a State(s) to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an Application for Federal Assistance and a Grant-In-Aid Award. The availability of Federal funds under a Grant-In-Aid Award shall be contingent upon the continued existence of the Cooperative Agreement.

(b) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other

requirements of the Office of Management and Budget Circular No. A-95 (as revised and published in the FEDERAL REGISTER on January 13, 1976 (41 FR 2052)).

(c) The mutual obligations by the co-operating agencies will be set forth in a Grant-In-Aid Award executed between the State and the Director. The Grant-In-Aid Award shall cover the proposed financing and the work items described in the documents supporting it. The form and content for both the Application for Federal Assistance and the Grant-In-Aid Award are provided in the Federal Aid Handbook No. 22.

§ 225.8 Availability of funds.

Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a Grant-In-Aid Award is signed by the Director.

§ 225.9 Payments.

The payment of the Federal share of costs incurred in the conduct of activities included under a Grant-In-Aid Award shall be in accordance with the Treasury Circular 1075.

(a) Federal payments under the Act shall not exceed 75 percent of the program costs as stated in the agreement; except, the Federal share may be increased to 90 percent when two or more States having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such States, jointly enter into an agreement with the Director.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Director as provided in Federal Management Circular 74-7.

(c) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of the Act shall have first been submitted to and approved by the Director. Payments shall be made for ex-

penditures reported and certified by the State agency. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds for the State.

(d) Vouchers and forms provided by the Director and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Director by the State agency.

[41 FR 24354, June 16, 1976, as amended at 49 FR 30074, July 26, 1984]

§ 225.10 Assurances.

A State shall certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

§ 225.11 Submission of documents.

Documents required by section 6 of the Act or by these regulations shall be addressed to the Director, National Marine Fisheries Service, Washington, DC 20235.

§ 225.12 Project evaluation.

Any difference of opinion about a proposed project or appraised value of land to be acquired or any other related matter will be considered by qualified representatives of the Director and the State. Final determination in the event of continued disagreement rests with the Director.

§ 225.13 Contracts.

The State may use its own regulations in obtaining services provided they adhere to Federal laws and the requirements set forth in Federal Management Circular 74-7. The State is the responsible authority without recourse to the Director regarding settlement of contractual issues.

§ 225.14 Inspection.

Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.